

1 AN ACT  
2 RELATING TO THE ENVIRONMENT; AMENDING SECTIONS OF THE WATER  
3 QUALITY ACT TO LIMIT RULEMAKING TO SPECIFIC AUTHORITY OF THE  
4 ACT.

5  
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

7 Section 1. Section 74-6-4 NMSA 1978 (being Laws 1967,  
8 Chapter 190, Section 4, as amended) is amended to read:

9 "74-6-4. DUTIES AND POWERS OF COMMISSION.--The  
10 commission:

11 A. may accept and supervise the administration of  
12 loans and grants from the federal government and from other  
13 sources, public or private, which loans and grants shall not  
14 be expended for other than the purposes for which provided;

15 B. shall adopt a comprehensive water quality  
16 management program and develop a continuing planning process;

17 C. shall not adopt or promulgate a standard or  
18 regulation that exceeds a grant of rulemaking authority  
19 listed in the statutory section of the Water Quality Act  
20 authorizing the standard or regulation;

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21 ~~C.~~ D. shall adopt water quality standards for surface  
22 and ground waters of the state based on credible scientific  
23 data and other evidence appropriate under the Water Quality  
24 Act. The standards shall include narrative standards and as  
25 appropriate, the designated uses of the waters and the water

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1 quality criteria necessary to protect such uses. The  
2 standards shall at a minimum protect the public health or  
3 welfare, enhance the quality of water and serve the purposes  
4 of the Water Quality Act. In making standards, the  
5 commission shall give weight it deems appropriate to all  
6 facts and circumstances, including the use and value of the  
7 water for water supplies, propagation of fish and wildlife,  
8 recreational purposes and agricultural, industrial and other  
9 purposes;

10 ~~D.~~ E. shall adopt, promulgate and publish regulations  
11 to prevent or abate water pollution in the state or in any  
12 specific geographic area, aquifer or watershed of the state  
13 or in any part thereof, or for any class of waters, and to  
14 govern the disposal of septage and sludge and the use of  
15 sludge for various beneficial purposes. The regulations  
16 governing the disposal of septage and sludge may include the  
17 use of tracking and permitting systems or other reasonable  
18 means necessary to assure that septage and sludge are  
19 designated for disposal in, and arrive at, disposal  
20 facilities, other than facilities on the premises where the  
21 septage and sludge is generated, for which a permit or other  
22 authorization has been issued pursuant to the federal act or  
23 the Water Quality Act. Regulations may specify a standard of  
24 performance for new sources that reflects the greatest  
25 reduction in the concentration of water contaminants that the

Deleted language: "shall not specify the  
method to be used to prevent or abate  
water pollution but"

1 commission determines to be achievable through application of  
2 the best available demonstrated control technology,  
3 processes, operating methods or other alternatives, including  
4 where practicable a standard permitting no discharge of  
5 pollutants. In making regulations, the commission shall give  
6 weight it deems appropriate to all relevant facts and  
7 circumstances, including:

8 (1) character and degree of injury to or  
9 interference with health, welfare, environment and property;

10 (2) the public interest, including the  
11 social and economic value of the sources of water  
12 contaminants;

13 (3) technical practicability and economic  
14 reasonableness of reducing or eliminating water contaminants  
15 from the sources involved and previous experience with  
16 equipment and methods available to control the water  
17 contaminants involved;

18 (4) successive uses, including but not  
19 limited to domestic, commercial, industrial, pastoral,  
20 agricultural, wildlife and recreational uses;

21 (5) feasibility of a user or a subsequent  
22 user treating the water before a subsequent use;

23 (6) property rights and accustomed uses; and

24 (7) federal water quality requirements;

25 ~~E.~~ F. shall assign responsibility for administering

1 its regulations to constituent agencies so as to assure  
2 adequate coverage and prevent duplication of effort. To this  
3 end, the commission may make such classification of waters  
4 and sources of water contaminants as will facilitate the  
5 assignment of administrative responsibilities to constituent  
6 agencies. The commission shall also hear and decide disputes  
7 between constituent agencies as to jurisdiction concerning  
8 any matters within the purpose of the Water Quality Act. In  
9 assigning responsibilities to constituent agencies, the  
10 commission shall give priority to the primary interests of  
11 the constituent agencies. The department of environment  
12 shall provide technical services, including certification of  
13 permits pursuant to the federal act, and shall maintain a  
14 repository of the scientific data required by this act;

15 ~~F.~~ G. may enter into or authorize constituent  
16 agencies to enter into agreements with the federal government  
17 or other state governments for purposes consistent with the  
18 Water Quality Act and receive and allocate to constituent  
19 agencies funds made available to the commission;

20 ~~G.~~ H. may grant an individual variance from any  
21 regulation of the commission whenever it is found that  
22 compliance with the regulation will impose an unreasonable  
23 burden upon any lawful business, occupation or activity. The  
24 commission may only grant a variance conditioned upon a  
25 person effecting a particular abatement of water pollution

1 within a reasonable period of time. Any variance shall be  
2 granted for the period of time specified by the commission.  
3 The commission shall adopt regulations specifying the  
4 procedure under which variances may be sought, which  
5 regulations shall provide for the holding of a public hearing  
6 before any variance may be granted;

7 ~~H.~~ I. may adopt regulations to require the filing  
8 with it or a constituent agency of proposed plans and  
9 specifications for the construction and operation of new  
10 sewer systems, treatment works or sewerage systems or  
11 extensions, modifications of or additions to new or existing  
12 sewer systems, treatment works or sewerage systems. Filing  
13 with and approval by the federal housing administration of  
14 plans for an extension to an existing or construction of a  
15 new sewerage system intended to serve a subdivision solely  
16 residential in nature shall be deemed compliance with all  
17 provisions of this subsection;

18 ~~D.~~ J. may adopt regulations requiring notice to it or  
19 a constituent agency of intent to introduce or allow the  
20 introduction of water contaminants into waters of the state;

21 K. shall specify in regulations the measures to be  
22 taken to prevent water pollution and to monitor water  
23 quality. The commission may adopt regulations for particular  
24 industries. The commission shall adopt regulations for the  
25 dairy industry and the copper industry. The commission shall

1 consider, in addition to the factors listed in Subsection E  
2 of this section, the best available scientific information.  
3 The regulations may include variations in requirements based  
4 on site-specific factors, such as depth and distance to  
5 ground water and geological and hydrological conditions. The  
6 constituent agency shall establish an advisory committee  
7 composed of persons with knowledge and expertise particular  
8 to the industry category and other interested stakeholders to  
9 advise the constituent agency on appropriate regulations to  
10 be proposed for adoption by the commission. The regulations  
11 shall be developed and adopted in accordance with a schedule  
12 approved by the commission. The schedule shall incorporate  
13 an opportunity for public input and stakeholder negotiations;

14 ~~J.~~ L. may adopt regulations establishing pretreatment  
15 standards that prohibit or control the introduction into  
16 publicly owned sewerage systems of water contaminants that  
17 are not susceptible to treatment by the treatment works or  
18 that would interfere with the operation of the treatment  
19 works;

20 ~~K.~~ M. shall not require a permit respecting the use  
21 of water in irrigated agriculture, except in the case of the  
22 employment of a specific practice in connection with such  
23 irrigation that documentation or actual case history has  
24 shown to be hazardous to public health or the environment;

25 ~~L.~~ N. shall not require a permit for applying less

1 than two hundred fifty gallons per day of private residential  
2 gray water originating from a residence for the resident's  
3 household gardening, composting or landscape irrigation if:

4 (1) a constructed gray water distribution  
5 system provides for overflow into the sewer system or on-site  
6 wastewater treatment and disposal system;

7 (2) a gray water storage tank is covered to  
8 restrict access and to eliminate habitat for mosquitos or  
9 other vectors;

10 (3) a gray water system is sited outside of  
11 a floodway;

12 (4) gray water is vertically separated at  
13 least five feet above the ground water table;

14 (5) gray water pressure piping is clearly  
15 identified as a nonpotable water conduit;

16 (6) gray water is used on the site where it  
17 is generated and does not run off the property lines;

18 (7) gray water is applied in a manner that  
19 minimizes the potential for contact with people or domestic  
20 pets;

21 (8) ponding is prohibited, application of  
22 gray water is managed to minimize standing water on the  
23 surface and to ensure that the hydraulic capacity of the soil  
24 is not exceeded;

25 (9) gray water is not sprayed;

1 (10) gray water is not discharged to a  
2 watercourse; and

3 (11) gray water use within municipalities or  
4 counties complies with all applicable municipal or county  
5 ordinances enacted pursuant to Chapter 3, Article 53 NMSA  
6 1978; and

7 ~~M.~~ O. shall coordinate application procedures and  
8 funding cycles for loans and grants from the federal  
9 government and from other sources, public or private, with  
10 the local government division of the department of finance  
11 and administration pursuant to the New Mexico Community  
12 Assistance Act."

13 Section 2. Section 74-6-5 NMSA 1978 (being Laws 1973,  
14 Chapter 326, Section 4, as amended) is amended to read:

15 "74-6-5. PERMITS--CERTIFICATION--APPEALS TO  
16 COMMISSION.--

17 A. By regulation, the commission may require  
18 persons to obtain from a constituent agency designated by the  
19 commission a permit for the discharge of any water  
20 contaminant or for the disposal or reuse of septage or  
21 sludge.

22 B. The commission shall adopt regulations  
23 establishing procedures for certifying federal water quality  
24 permits.

25 C. Prior to the issuance of a permit, the



1 constituent agency may require the submission of plans,  
2 specifications and other relevant information that it deems  
3 necessary.

4 D. The commission shall by regulation set the  
5 dates upon which applications for permits shall be filed and  
6 designate the time periods within which the constituent  
7 agency shall, after the filing of an administratively  
8 complete application for a permit, either grant the permit,  
9 grant the permit subject to conditions or deny the permit.  
10 The constituent agency has the burden of showing that each  
11 condition is reasonable and necessary to ensure compliance  
12 with the Water Quality Act and applicable regulations,  
13 considering site-specific conditions. After regulations have  
14 been adopted for a particular industry, permits for  
15 facilities in that industry shall be subject to conditions  
16 contained in the regulations. Additional conditions on a  
17 final permit may be imposed if the applicant is provided with  
18 an opportunity to review and provide comments in writing on  
19 the draft permit conditions and to receive a written  
20 explanation of the reasons for the conditions from the  
21 constituent agency.

22 E. The constituent agency shall deny any  
23 application for a permit or deny the certification of a  
24 federal water quality permit if:

- 25 (1) the effluent would not meet applicable

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1 state or federal effluent regulations, standards of  
2 performance or limitations;

3 (2) any provision of the Water Quality Act  
4 would be violated;

5 (3) the discharge would cause or contribute  
6 to water contaminant levels in excess of any state or federal  
7 standard. Determination of the discharge's effect on ground  
8 water shall be measured at any place of withdrawal of water  
9 for present or reasonably foreseeable future use.

10 Determination of the discharge's effect on surface waters  
11 shall be measured at the point of discharge; or

12 (4) the applicant has, within the ten years  
13 immediately preceding the date of submission of the permit  
14 application:

15 (a) knowingly misrepresented a material  
16 fact in an application for a permit;

17 (b) refused or failed to disclose any  
18 information required under the Water Quality Act;

19 (c) been convicted of a felony or other  
20 crime involving moral turpitude;

21 (d) been convicted of a felony in any  
22 court for any crime defined by state or federal law as being  
23 a restraint of trade, price-fixing, bribery or fraud;

24 (e) exhibited a history of willful  
25 disregard for environmental laws of any state or the United

Deleted :  
"discharges"

1 States; or

2 (f) had an environmental permit revoked  
3 or permanently suspended for cause under any environmental  
4 laws of any state or the United States.

5 F. The commission shall by regulation develop  
6 procedures that ensure that the public, affected governmental  
7 agencies and any other state whose water may be affected  
8 shall receive notice of each application for issuance,  
9 renewal or modification of a permit. Public notice shall  
10 include:

11 (1) for issuance or modification of a  
12 permit:

13 (a) notice by mail to adjacent and  
14 nearby landowners; local, state and federal governments; land  
15 grant organizations; ditch associations; and Indian nations,  
16 tribes or pueblos;

17 (b) posting at a place conspicuous to  
18 the public and near the discharge or proposed discharge site;  
19 and

20 (c) a display advertisement in English  
21 and Spanish in a newspaper of general circulation in the  
22 location of the discharge or proposed discharge; provided,  
23 however, that the advertisement shall not be displayed in the  
24 classified or legal advertisement sections; and

25 (2) for issuance of renewals of permits:

1 (a) notice by mail to the interested  
2 public, municipalities, counties, land grant organizations,  
3 ditch associations and Indian nations, tribes or pueblos; and

4 (b) a display advertisement in English  
5 and Spanish in a newspaper of general circulation in the  
6 location of the discharge; provided, however, that the  
7 advertisement shall not be displayed in the classified or  
8 legal advertisement sections.

9 G. No ruling shall be made on any application for  
10 a permit without opportunity for a public hearing at which  
11 all interested persons shall be given a reasonable chance to  
12 submit evidence, data, views or arguments orally or in  
13 writing and to examine witnesses testifying at the hearing.  
14 The hearing shall be recorded. Any person submitting  
15 evidence, data, views or arguments shall be subject to  
16 examination at the hearing.

17 H. The commission may adopt regulations for the  
18 operation and maintenance of the permitted facility,  
19 including requirements, as may be necessary or desirable,  
20 that relate to continuity of operation, personnel training  
21 and financial responsibility, including financial  
22 responsibility for corrective action.

23 I. Permits shall be issued for fixed terms not to  
24 exceed five years, except that for new discharges, the term  
25 of the permit shall commence on the date the discharge

1 begins, but in no event shall the term of the permit exceed  
2 seven years from the date the permit was issued.

3 J. By regulation, the commission may impose  
4 reasonable conditions upon permits requiring permittees to:

5 (1) install, use and maintain effluent  
6 monitoring devices;

7 (2) sample effluents and receiving waters  
8 for any known or suspected water contaminants in accordance  
9 with methods and at locations and intervals as may be  
10 prescribed by the commission;

11 (3) establish and maintain records of the  
12 nature and amounts of effluents and the performance of  
13 effluent control devices;

14 (4) provide any other information relating  
15 to the discharge or direct or indirect release of water  
16 contaminants; and

17 (5) notify a constituent agency of the  
18 introduction of new water contaminants from a new source and  
19 of a substantial change in volume or character of water  
20 contaminants being introduced from sources in existence at  
21 the time of the issuance of the permit.

22 K. The commission shall provide by regulation a  
23 schedule of fees for permits, not exceeding the estimated  
24 cost of investigation and issuance, modification and renewal  
25 of permits. Fees collected pursuant to this section shall be

1 deposited in the water quality management fund.

2 L. The issuance of a permit does not relieve any  
3 person from the responsibility of complying with the  
4 provisions of the Water Quality Act, any applicable  
5 regulations or water quality standards of the commission or  
6 any applicable federal laws, regulations or standards.

7 M. A permit may be terminated or modified by the  
8 constituent agency that issued the permit prior to its date  
9 of expiration for any of the following causes:

10 (1) violation of any condition of the  
11 permit;

12 (2) obtaining the permit by  
13 misrepresentation or failure to disclose fully all relevant  
14 facts;

15 (3) violation of any provisions of the Water  
16 Quality Act or any applicable regulations, standard of  
17 performance or water quality standards;

18 (4) violation of any applicable state or  
19 federal effluent regulations or limitations; or

20 (5) change in any condition that requires  
21 either a temporary or permanent reduction or elimination of  
22 the permitted discharge.

23 N. If the constituent agency denies, terminates or  
24 modifies a permit or grants a permit subject to condition,  
25 the constituent agency shall notify the applicant or

1 permittee by certified mail of the action taken and the  
2 reasons. Notice shall also be given by mail to persons who  
3 participated in the permitting action.

4 O. A person who participated in a permitting  
5 action before a constituent agency or a person affected by a  
6 certification of a federal permit and who is adversely  
7 affected by such permitting action or certification may file  
8 a petition for review before the commission. Unless a timely  
9 petition for review is made, the decision of the constituent  
10 agency shall be final and not subject to judicial review.  
11 The petition shall:

12 (1) be made in writing to the commission  
13 within thirty days from the date notice is given of the  
14 constituent agency's action;

15 (2) include a statement of the issues to be  
16 raised and the relief sought; and

17 (3) be provided to all other persons  
18 submitting evidence, data, views or arguments in the  
19 proceeding before the constituent agency.

20 P. If a timely petition for review is made, the  
21 commission shall consider the petition within ninety days  
22 after receipt of the petition. The commission shall notify  
23 the petitioner and the applicant or permittee, if other than  
24 the petitioner, by certified mail of the date, time and place  
25 of the review. If the petitioner is not the applicant or

1     permittee, the applicant or permittee shall be a party to the  
2     proceeding. The commission shall ensure that the public  
3     receives notice of the date, time and place of the review.

4             Q. The commission shall review the record compiled  
5     before the constituent agency, including the transcript of  
6     any public hearing held on the application or draft permit,  
7     and shall allow any party to submit arguments. The  
8     commission may designate a hearing officer to review the  
9     record and the arguments of the parties and recommend a  
10    decision to the commission. The commission shall consider  
11    and weigh only the evidence contained in the record before  
12    the constituent agency and the recommended decision of the  
13    hearing officer, if any, and shall not be bound by the  
14    factual findings or legal conclusions of the constituent  
15    agency. Based on the review of the evidence, the arguments  
16    of the parties and recommendations of the hearing officer,  
17    the commission shall sustain, modify or reverse the action of  
18    the constituent agency. The commission shall enter ultimate  
19    findings of fact and conclusions of law and keep a record of  
20    the review.

21            R. Prior to the date set for review, if a party  
22    shows to the satisfaction of the commission that there was no  
23    reasonable opportunity to submit comment or evidence on an  
24    issue being challenged, the commission shall order that  
25    additional comment or evidence be taken by the constituent



1 agency. Based on the additional evidence, the constituent  
2 agency may revise the decision and shall promptly file with  
3 the commission the additional evidence received and action  
4 taken. The commission shall consider the additional evidence  
5 within ninety days after receipt of the additional evidence  
6 and shall notify the petitioner and the applicant or  
7 permittee, if other than the petitioner, of the date, time  
8 and place of the review.

9 S. The commission shall notify the petitioner and  
10 all other participants in the review proceeding of the action  
11 taken by the commission and the reasons for that action."

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